IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 82 of 1985

in

SPECIAL CIVIL APPLICATIONNo 5535 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT SECONDARY EDUCATION BOARD,

Versus

PANKAJKUMAR NARANRAI MODI

Appearance:

1. LETTERS PATENT APPEAL No. 82 of 1985

MR DEEPAK DAVE for MC BHATT for Appellant No. 1

MR AD OZA, G. P. for Appellant No. 1

MR D.M. Parikh for Mr. MJ THAKORE for Respondent No. 1

MS MINI M NAIR for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE K.M.MEHTA

Date of decision: 28/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

1. The Gujarat Secondary Education Board has challenged the judgment and order dated 12th March, 1985 of the learned Single Judge in Special Civil Application no.5535/1984 by which the Board was directed to condone the deficiency of marks for passing in the subject of English under Regulation 30 of the Regulations and declare that the respondent-original petitioner had passed in the subject of English and was successful at the Higher Secondary Certificate Examination which was held in April, 1984 and issue certificate in that regard in accordance with the Rules and Regulations on or before 16th March, 1985.

2. The learned Single Judge in the background of the fact that the petitioner's answer-book in English was not traceable and it was not possible to verify the marks obtained by him in that subject held that the Board should have exercised its powers conferred on it under Regulation 30 and condone the deficiency in the marks obtained by the petitioner in the subject of English and that the petitioner cannot be allowed to suffer merely because the Board had lost his answer-book.

3. The ratio of the decision rendered by the learned Single Judge came to be considered by the Division Bench in KADIWALA BHARATKUMAR JAMIYATRAM VS. SHRI CHAUHAN, ASSISTANT SECRETARY, GUJARAT SECONDARY EDUCATION BOARD, GANDHINAGAR reported in 1987(2) G.L.R. 839 and after considering the Regulations 29, 30 and 34 of the High Secondary Certificate Examination Regulations, 1977 and the decision of the learned Single Judge in the present petition i.e. Special Civil Application no.5535/1984, the Division Bench observed in paragraph 14 of its judgment as under:

" We are of the view, therefore, that the application of Regulation 29 or Regulation 30 of the Regulations to the case of the petitioner does not arise at all and, with respect, the view taken by R.C. Mankad, J. in Special Civil Application no.5535/1984, that Regulation 30 should be applied in a case such as this, is not correct."

4. It will thus be seen that a Division Bench of this Court has overruled the present decision of the learned Single Judge on the question of applicability of Regulation 30 in cases where the answer-book is lost. This very decision, the ratio of which is overruled, is challenged before us in this appeal. We do not find any sufficient reason to take a different view of the matter than the one taken by the Division Bench for disagreeing with the ratio of the decision of the learned Single Judge. Therefore, Regulation 30 which has been invoked by the learned Single Judge will not apply to the facts of this case and the impugned decision cannot be sustained. The judgment and order in appeal is, therefore, set aside. However, in view of the fact that there was no stay of the impugned decision and the direction given therein that the Board should declare the respondent to have passed the examination and issue certificate in that regard, the respondent was declared to have been successful at the examination and the certificate was issued on the strength of which during all these years, as stated by his learned Counsel, he has graduated and settled in life and is serving somewhere. Having regard to these peculiar facts, the learned Counsel for the Board submitted that the Board will not revoke the certificate. It is, therefore, understood that despite the impugned decision having been set aside in this appeal, the certificate which has been issued in favour of the respondent on the strength of which he has studied further and graduated will not be revoked.

5. For the above reasons, the appeal is allowed with no order as to costs.

(R.K.Abichandani,J.)

(K.M. Mehta, J.)

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